

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

06/19/2002

CLERK OF THE COURT  
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

CV 2002-005771

FILED: \_\_\_\_\_

MICHAEL MANKENBERG

RICHARD L KLAUER

v.

PIONEER HEALTHCARE SERVICES INC

DAWN A NOBLE

GLENDAL JUSTICE COURT  
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

Appellee, Michael Mankenberg, was employed by Appellant, Pioneer Health Care Services, and submitted his letter of resignation on July 14, 2000. According to the record, Appellant's employee handbook states that an employee must give proper notice (2 weeks) in order to receive paid time off. It was agreed upon by both parties that Appellee would work through July 24, 2000, (only a 10-day notice) in order to receive the paid time off that he had earned. The record shows that Appellee's final day at the job site was July 21, 2000; he handed in his pager and keys before he left. The record also

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shows that Appellee received a phone call from a nurse on July 22, 2000, that he answered her question, and that it was common practice for the salaried employees to be "on call" receiving phone calls at their home. The justice court awarded "paid time off," attorney's fees and costs, and treble damages to Appellee.

The first issue is whether the trial court erred in awarding attorney's fees and costs. Attorney's fees are not available to parties under the Arizona Wage Act, which comprises A.R.S. §§ 23-350-355.<sup>1</sup> The awarding of attorney's fees by the justice court was erroneous. There is no evidence on the record that supports Appellee's claim that this was a contract. Therefore, to award attorney's fees pursuant to A.R.S. § 12-341.01 would be erroneous as well.

The second issue is whether the justice court erred in awarding "paid time off" to Appellee. The record shows that Appellee was allowed to work "on call" from home and that he actually did field a call during his last weekend as an employee of Appellant. It is clear that Appellant made a good faith effort to work, or be available to work as a salaried "on call" employee. The law is quite clear that if Appellant had "a reasonable expectation" to be paid he should receive his "paid time off" monies.<sup>2</sup> The justice court did not err in awarding Appellee "paid time off."

The final issue is whether the justice court erred in awarding treble damages against Appellant under the Arizona Wage Act. An employer may withhold wages due an employee if there is a reasonable good-faith dispute.<sup>3</sup> If an employer wrongfully fails to pay wages due an employee, the employee may recover treble the amount of unpaid wages due.<sup>4</sup> It is at the discretion of the court to award treble damages for unlawfully withholding wages.<sup>5</sup>

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<sup>1</sup> Abrams v. Horizon Corp., 137 Ariz. 73, 669 P.2d 51 (1983); See Laws 1980, Ch. 202 § 6.

<sup>2</sup> A.R.S. §23-505(5).

<sup>3</sup> A.R.S. § 23-352(3).

<sup>4</sup> A.R.S. § 23- 355.

<sup>5</sup> *Id*; See Crum v. Maricopa County, 190 Ariz. 512, 513, 950 P.2d 171, 172 (App. 1997) (holding that the awarding of treble damages was an abuse of discretion in the case before them).

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To justify an award of treble damages for unpaid wages an employer's actions must constitute an "unreasonable and bad faith attempt to avoid paying,"<sup>6</sup> or try to "defraud employees of rightfully-earned wages."<sup>7</sup>

After a careful review of the record this court finds that a good-faith wage dispute did exist between Appellee and Appellant. The record is replete with evidence that there was a dispute concerning the last three days of Appellee's employment. Appellee felt that he could work from home, fielding calls and would still be considered "at work." Appellant felt that because Appellee turned in his pager and keys, he has failed to work through the weekend. This is all subject to interpretation and a thorough understanding of the employment situation of Appellee. Therefore, a good-faith dispute concerning wages did exist and an award of treble damages is improper.

IT IS THEREFORE ORDERED affirming in part, reversing in part (the orders for attorney's fees and for treble damages), the decision of the Glendale Justice Court.

IT IS FURTHER ORDERED remanding this case back for all future proceedings to the Glendale Justice Court.

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<sup>6</sup> *Quine v. Godwin*, 132 Ariz. 409, 646 P.2d 294 (App. 1982).

<sup>7</sup> *Patton v. County of Mohave*, 154 Ariz. 168, 172, 741 P.2d 301 (App. 1987); See *Apache East, Inc. v. Wiegand*, 119 Ariz. 308, 312, 580 P.2d 769, 773 (App.1978).